

## **Equal Employment Opportunity Comm.**

## **§ 1604.9**

jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupational qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

### **§ 1604.7 Pre-employment inquiries as to sex.**

A pre-employment inquiry may ask "Male....., Female....."; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

### **§ 1604.8 Relationship of title VII to the Equal Pay Act.**

(a) The employee coverage of the prohibitions against discrimination based on sex contained in title VII is coextensive with that of the other prohibitions contained in title VII and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under title VII.

(c) Where such a defense is raised the Commission will give appropriate con-

sideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

### **§ 1604.9 Fringe benefits.**

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under title VIII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have